BEST COPY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 525.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

CORONADO BEACH COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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a UNITED STATES OF AMERICA, ss:

To the Coronado Beach Company, a corporation, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, D. C., on the 17th day of Sept., 1920, being within sixty days from the date hereof, pursuant to an order allowing an appeal of record in the clerk's office of the District Court of the United States for the Southern District of California, Southern Division, in the suit numbered E-34, equity, in the records of said court, wherein The Coronado Beach Company, a corporation, is defendant and appellee, and the United States of America is plaintiff and appellant, to show cause, if any there be, why the decree quieting and establishing the title of the defendant, The Coronado Beach Company, to the land described in said decree, against any and all claims and demands whatsoever of plaintiff, the United States of America, thereto, should not be corrected, and why speedy justice should not be done in that behalf.

Witness, the honorable Oscar A. Trippet, United States district judge for the Southern District of California, this 21 day of July, A. D. 1920, and of the independence of the United States the one hundred and forty-fourth.

OSCAR A. TRIPPET,
U. S. District Judge
for the Southern District of California.

b Service of the within citation on appeal is admitted this 23d day of July, 1920.

MORRISON, DUNNE & BROSNICK,
PETER F. DUNNE,
HERBERT W. CLARK,
Solicitors for Coronado Beach Company.

Equity No. E-34. In the Supreme Court of the United States. United States of America, plaintiff, *vs.* The Coronado Beach Company, defendant. Citation. Filed July 24, 1920. Chas. N. Williams, clerk, by R. S. Zimmerman, deputy clerk.

1 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, plaintiff,
vs.
THE CORONADO BEACH COMPANY, A CORPORATION, claimant and defendant. } Bill of complaint.

To the judges of the District Court of the United States for the Southern District of California:

The United States, by the Attorney General thereof, brings this its bill of complaint against the Coronado Beach Company, a corporation, duly organized and existing under and by virtue of the laws of the State of California, residing therein.

And thereupon your orator complains and shows unto the court that the defendant, the Coronado Beach Company, is now, and was at all the times in this complaint mentioned, a corporation duly organized and existing under and by virtue of the laws of the State of California.

II.

Your orator further shows and alleges that the plaintiff is the owner of an easement, estate, and interest in and to the tract of land hereinafter described, for use for the defense or security of the Nation, and in connection therewith, as sites for permanent aviation stations for the Army and Navy and for aviation school purposes. That plaintiff is now, and ever since the first day of August, 1917, has been, in the possession, occupancy, and use thereof for the purposes above mentioned, under and by reason of an Executive order of the President of the United States, dated and issued on said first day of August, 1917, pursuant to an act of Congress of July
2 27th, 1917 (c. 42, 40 Stat., 247), which said tract of land is situated in the county of San Diego, State of California, and is known, designated, and described as the whole of North Island, in the harbor of San Diego, California.

III.

Your orator further shows and alleges that the defendant, the Coronado Beach Company, a corporation, claims to have, own, or hold some right, title, estate, or interest in or to, or some claim or demand upon, said tract of land, or some part thereof, adverse to or in conflict with plaintiff's said easement, estate, and interest therein and thereto; but your orator alleges that said right, title, interest, claim, and demand of said defendant in or to said tract of land, or any part thereof, if any it has, is subject and subordinate to said easement, estate, and interest of the plaintiff in said land for use for the defense or security of the Nation.

IV.

Your orator further shows and alleges that the public interest and necessity require that the possession and use of said tract of land as aforesaid be taken and maintained by plaintiff permanently for the purposes hereinbefore set forth, and that this court inquire into and determine and adjudge any and all interests, estates, claims, or demands of said defendant in or to said tract of land over and beyond any rights therein or thereto in said plaintiff; and that, in the event this court shall find that said defendant has, owns, or holds any right, title, interest, or estate in or to said tract of land over and beyond plaintiff's said easement, estate, and interest therein and thereto, that this court cause such right, title, interest, or estate of said defendant to be appraised and the value thereof deter-

3 mined and adjudged, and that the same be condemned for public use and for the purposes hereinbefore stated.

V.

Your orator further shows and alleges that the names of all the claimants of the said tract of land, or any part thereof, or of any estate or interest therein or thereto, sought to be determined and adjudged, and if necessary appraised and condemned in this action, so far as known to your orator, are set forth in the title of this complaint.

VI.

Your orator further shows and alleges that the description of said tract of land set forth in Paragraph II hereof, includes the whole of an entire parcel or tract of real property.

Wherefore, your orator having no plain, speedy, or adequate remedy at law, prays that the said defendant, the Coronado Beach Company, a corporation, be required by answer to set forth the nature and extent of its claim, estate, and interest in or to the said tract of land, or any part thereof, over and beyond any rights therein or thereto in plaintiff; and that such claim, estate, or interest of said defendant, if any it has, be determined and adjudged to be subject and subordinate to plaintiff's said easement, estate, and interest therein and thereto; and that the defendant be enjoined from claiming or asserting any right, title, interest, or estate in or to said tract of land adverse to or in conflict with plaintiff's said easement, estate, and interest therein and thereto.

Your orator prays that in the event the court shall find that said defendant has, owns, or holds any right, title, interest, or estate in or to, or claim or demand upon, said tract of land, or any part thereof,
4 over and beyond any rights therein or thereto in plaintiff, that the court shall cause such right, title, interest and estate of defendant, and the whole thereof, to be appraised, and the value thereof determined and adjudged; and that upon payment to said defendant, or into court for it, of the value of the same, as so determined, together with interest thereon at the rate of six per centum per annum, from the date the possession of said tract of land was taken by plaintiff as herein alleged, that the court will make and enter a proper decree condemning any and all such estate or interest of defendant in or to said tract of land, for public use for the defense or security of the Nation, and in connection therewith as sites for permanent aviation stations for the Army and Navy and for aviation school purposes; and vesting title in fee simple to said land in the United States.

Your orator prays that a writ of subpœna be issued out of, and under the seal of, this honorable court, directed to the Coronado Beach Company, a corporation, commanding it, on a certain day, and under a certain penalty to be inserted, to be and appear before

this honorable court, and then and there to answer the premises, and to abide such further order and decree as may be agreeable to justice.

Your orator waives answer under oath.

Your orator prays for such other and further relief as to the court may seem equitable, and for costs of this suit.

And your orator will ever pray.

A. MITCHELL PALMER,
Attorney General of the United States,
GEO. J. DENIS,
Special Assistant to the Attorney General,
ROBERT O'CONNOR,
United States Attorney, Southern District of California,
Attorneys for Plaintiff.

5 (Endorsed:) No. E-34 Eq. In the District Court of the United States for the Sou. Dist. of California, Southern Division. United States of America, plaintiff, *vs.* The Coronado Beach Company, a corporation, claimant and defendant. Bill of complaint. Condemnation proceedings for aviation stations. Filed Aug. 7, 1919. Chas. N. Williams, clerk, by R. S. Zimmerman, deputy clerk.

6 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* CORONADO BEACH COMPANY, A CORPORATION, claimant and defendant.	No. E 34. In equity.

ANSWER OF CORONADO BEACH COMPANY.

Now comes the defendant Coronado Beach Company and, for answer to the complaint herein, admits, denies, and alleges as follows:

I.

Answering the allegations of Paragraph I of the complaint herein, defendant admits that it now is and at all times in the complaint mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California.

II.

Answering the allegations of Paragraph II of the complaint herein, defendant denies that plaintiff is the owner of an easement, estate, and interest in and to, or of an easement, estate, or interest in or to the tract of land described in the complaint herein for use for the defense or security of the Nation, or for any purpose or at all,

and in connection therewith, or in connection therewith, as sites for permanent aviation stations for the Army and Navy and for aviation school purposes, or for permanent aviation stations for the Army or Navy, of for aviation school purposes, or for any purpose, or at all.

7 Admits that plaintiff is now, and ever since the first day of August, 1917, has been in the possession, occupancy, and use of the tract of land described in the complaint, for the purposes alleged in the said complaint, under and by reason of an Executive order of the President of the United States, dated and issued on said first day of August, 1917, pursuant to an act of Congress approved July 27, 1917.

Admits that said tract of land is situated in the county of San Diego, State of California, and is known, designated, and described as the whole of North Island, in the harbor of San Diego, California.

III.

Answering the allegations of Paragraph III of the said complaint, defendant admits that it claims to have, own, and hold some right, title, estate, and interest in and to, and some claim and demand upon, said tract of land and all thereof, adverse to and in conflict with the alleged easement, estate, and interest of plaintiff therein or thereto. And in this behalf defendant alleges that at all the times in the complaint mentioned it has been and now is the sole and exclusive owner in fee simple absolute, free and clear of any easement, estate, interest, right, title, claim, or demand of any kind, character, or description of plaintiff, in or to the same, or any part or parcel thereof, for any purpose whatsoever, of all and singular the tract of land and premises mentioned and described in the complaint herein, and situated in the county of San Diego, State of California, and known, designated, and described as the whole of North Island, in the harbor of San Diego, California. And defendant denies that its said right, title, interest, claim, and demand in or to said tract of land, or that its right, title, interest, claim, or demand in or to said tract of land, or any part thereof, is

8 subject and subordinate, or subject or subordinate, to said alleged easement, estate, and interest, or to said alleged easement, estate, or interest, of plaintiff in said land for the defense or security of the Nation, or for any purpose or at all.

IV.

Answering the allegations of Paragraph IV of the said complaint, defendant denies that the public interest and necessity or the public interest or necessity require or requires that the possession and use, or possession or use, of said tract of land, or any thereof, be taken and maintained, or taken or maintained, by plaintiff permanently, or at all, for the or any purposes set forth in the complaint herein.

V.

And further answering the complaint of plaintiff, defendant alleges that the value of the property, land, and premises sought to be condemned by plaintiff amounts to the sum of seven million five hundred thousand dollars ($7,500,000.00), and that in the event said property, land, and premises, described in the complaint herein, sought to be condemned in this action, are condemned as prayed herein, this defendant will be damaged in the sum of seven million five hundred thousand dollars ($7,500,000.00).

Second defense.

And for another and second defense to the bill of complaint herein defendant alleges:

I.

That on the 20th day of April, 1852, and under and pursuant to the terms and provisions of an act of the Congress of the United States, approved March 3, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," and
9 of acts amendatory thereof, Frederick Billings, James R. Bolton, and Henry W. Halleck filed their petition with the Board of Commissioners on Private Land Claims in California, wherein and whereby they presented to the said commissioners for confirmation, their claim to that certain tract of land and real estate in the county of San Diego and State of California, known and described as follows, to wit:

"The island or peninsula of San Diego, situated in said county of San Diego, and bounded on the north by the estero of the port of San Diego towards the town; on the east by the end of the ranch of San Augustin Melijo; on the south by the sea, and on the west by the anchorage for ships."

That thereafter such proceedings were had by and before said board of commissioners concerning said claim, which said claim was numbered 188 on the docket of said board; that on October 31st, 1854, said board of commissioners, by decree rendered, rejected and refused to confirm said claim.

II.

That within six (6) months after the said decision by said board of commissioners, on the said claim No. 188, and under and by virtue of the terms and provisions of the said act of Congress approved March 3, 1851, and of the acts amendatory thereof, the said Frederick Billings, James R. Bolton, and Henry W. Halleck filed with the clerk of the District Court of the United States for the Southern District of California, that being the district court of the district in which the land described in this second defen. was situ-

ated, notice of their intention to prosecute an appeal from the decision of said board of commissioners on said claim No. 188.

III.

That on September 22, 1855, and under and by virtue of the terms and provisions of the said act of Congress and of the acts
10 amendatory thereof, the said Frederick Billings, James R. Bolton, and Henry W. Halleck presented to and filed in the District Court of the United States for the Southern District of California, that being the district court of the district in which the land described in this second defense was situated, their petition setting forth fully the nature of their claim to the lands hereinabove in this second defense described, and the names of the original and then claimants thereto, and containing a deraignment of the title of the said claimants to said land, together with a transcript of the report of the said board of commissioners and of all the documentary evidence and testimony of the witnesses on which said claim was founded, and prayed the said district court to review the decision of the said board of commissioners on said claim No. 188, and to decide on the validity thereof.

That the said petition so presented to and filed with the said district court as aforesaid was filed in cause number 257 on the docket of said court, and that the title of said cause was "Frederick Billings et al., assignees of Bezer Simmons *vs.* The United States."

That thereafter and on December 15, 1855, summons in said cause number 257 issued out of and under the seal of said district court directed to the United States district attorney for the Southern District of California, and, together with a copy of the said petition, was served on the said United States district attorney at Los Angeles, California, on December 26, 1855, as is shown by the return of the United States marshal thereon. That said summons and return were filed and now remain on file in said cause number 257 and are hereby referred to.

That on January 4, 1856, the said United States district at-
11 torney for the Southern District of California filed on behalf of the United States in said cause number 257, then pending in the said district court, an answer to the said petition, denying each and every allegation of the said petition, and denying the validity of the title of the said Frederick Billings, James R. Bolton, and Henry W. Halleck to the land and premises described in the said petition, which said land and premises are the same land and premises hereinabove in this second defense described.

That thereafter, in said cause number 257 on the docket of said district court, such proceedings were had that the said cause came on regularly for trial and was duly and regularly tried on the merits thereof and argued by counsel for the respective parties, and thereupon the said court, at the December term thereof, in the year

1856, duly and regularly made and entered its judgment and decree therein, ordering, adjudging, and decreeing as follows, to-wit:

"This cause coming on to be heard on appeal from the decision of the board of land commissioners to ascertain and settle private land claims in California, upon the transcript of the proceedings and decision of said board and the papers and evidence upon which said decision was founded, and also upon other evidence taken and filed in this court, and counsel for the respective parties having been heard, it is:

"Ordered, adjudged, and decreed that the decision of said board of land commissioners rejecting the claims of the appellants Frederick Billings and others be, and the same is hereby, reversed;

"And it is further ordered, adjudged, and decreed that the title of the appellants Frederick Billings and others to the land claimed by them, as set forth and described in their petition to the said board of commissioners and the documentary and other evidence in this case, is a good and valid title, and that their claim to the said land be, and the same is hereby, confirmed.

"The land of which confirmation is hereby made is in quantity two square leagues and no more, is known by the name of the 'island or peninsula of San Diego,' is situated in the county of San Diego, and is bounded on the north by the estero of the port of San Diego towards the town, east by the end of the ranch of San Augustin Melijo, south by the sea, and west by the anchorage for ships, according to the documents of title and map to which reference is had. If the quantity within said boundaries is less than two square
12 leagues, then the confirmation hereby made is for the whole tract; but if the quantity within said boundaries exceeds two square leagues, then the confirmation hereby made is made for two square leagues and no more."

That the said judgment and decree so made as aforesaid was filed in said cause number 257 on January 12, 1857, and entered at page 130 of Judgments and Decrees of the United States District Court for the Southern District of California in the volume thereof containing the judgments and decrees of said court for the period beginning September 10, 1853, and ending December 9, 1865, to which record reference is hereby made.

IV.

That after the rendition and entry of the judgment and decree aforesaid by the said district court, the United States appealed from said judgment and decree to the Supreme Court of the United States, and in that court such proceedings were had that at the December term thereof in the year 1863 it was ordered, adjudged, and decreed by said Supreme Court that the said appeal be and the same was then dismissed; and thereupon a mandate in the usual form was issued out of and under the seal of the said Supreme Court, directed to the judge of the District Court of the United States for the South-

ern District of California, directing and commanding that in the said cause No. 257, on the docket of the said District Court for the Southern District of California, such further proceedings should be had as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

V.

That at the regular April term of the United States District
13 Court for the District of California, in the year 1867, the said mandate of the Supreme Court of the United States was presented to said United States District Court for the District of California, and filed in said cause No. 257, and it was thereupon ordered, adjudged, and decreed by the United States District Court that the appeal theretofore sued out and allowed by the United States from the decree of confirmation rendered in the said cause No. 257 by the late United States District Court for the Southern District of California, be, and the same was, then dismissed, and that the said Frederick Billings, James R. Bolton, and Henry W. Halleck be, and they were thereby, allowed to proceed under said decree of confirmation as under a final decree. That the said order, so made as aforesaid, was filed in said cause No. 257 in the United States District Court for the District of California, and now remains on file therein; and that the said mandate also now remains on file in said cause in said court.

VI.

That at a stated term of the United States District Court for the District of California, held at San Francisco on the 7th day of May, 1867, such proceedings were duly and regularly had by said court in the said cause No. 257 that the said court duly and regularly ordered that Archibald C. Peachy and William H. Aspinwall be substituted in the place and lieu of Frederick Billings, James R. Bolton, and Henry W. Halleck, and the said cause was ordered revived in the names of said Archibald C. Peachy and William H. Aspinwall as claimants and confirmees therein, and all other proceedings therein were ordered to be had in their names. That the said order, so made as aforesaid, was filed in said cause on May 17, 1867, and now remains on file therein.

14 VII.

That the land, real estate, and premises described in plaintiff's complaint herein are, and at all times have been, a part of, and within the exterior boundaries of, the land, real estate, and premises described hereinabove in this second defense; that heretofore, by divers mesne conveyances made, executed, and delivered to it and to its predecessors in interest and title, the defendant herein became

and now is the sole and exclusive owner in fee simple absolute of all and singular the land, real estate, and premises hereinabove in this second defense described; that the cause of action sued upon in said cause No. 257, and the issues adjudicated and determined therein as aforesaid, were and are identical with the cause of action sued upon in and the issues now sought to be raised by the complaint of plaintiff herein; that the decree of confirmation, so as aforesaid rendered and entered by the United States District Court for the Southern District of California, in said cause No. 257, was, is, and remains a final decree upon the merits of said cause and between the parties thereto and their privies; and that the said court had full power, authority, and jurisdiction over the said parties and the subject matter of said cause. And that the decree of said district court confirming the title to the said island or peninsula of San Diego is and constitutes a bar to so much of the present action of plaintiff as seeks to ascertain or determine in plaintiff an easement, estate, or interest therein or thereto for any purpose whatsoever, and the issues tendered by the complaint herein as to such matters are res adjudicata as between the parties hereto.

VIII.

15 That under and by virtue of the terms and provisions of an act of the Congress of the United States approved July 27, 1866, entitled "An act in relation to the District Courts of the United States in the States of California and Louisiana" (14 Statutes at Large, page 300), said United States District Court for the District of California was vested with the power and jurisdiction theretofore had and exercised by the said District Court for the Southern District of California, and had full power, jurisdiction, and authority to proceed as aforesaid in said cause, No. 257, and to make and enter the said orders and decrees therein.

Third defense.

And for another and further defense to the bill of complaint herein defendant alleges:

I.

That on the 11th day of June, 1869, the plaintiff herein made, executed, and delivered to Archibald C. Peachy and William H. Aspinwall its certain instrument in writing, commonly called a patent, wherein and whereby it gave and granted unto the said Archibald C. Peachy and William H. Aspinwall and to their heirs and assigns forever, all and singular the following described land and premises situate, lying, and being in the county of San Diego and State of California, and described as follows, to wit:

"Lot No. forty (40), in township seventeen (17) south, of range three (3) west; lot No. thirty-seven (37), in township eighteen (18)

south, of range three (3) west; and lot No. thirty-eight (38), in township eighteen (18) south, of range two (2) west, of the San Bernardino meridian, containing four thousand one hundred and eighty-five and forty-six one-hundredths (4,185.46) acres."

That the said patent, so made, executed, and delivered as aforesaid, was and is recorded in volume 7 at pages 246 to 249, inclusive, in the Record of Patents, in the General Land Office of plaintiff,
16 and was filed for record in the office of the recorder of the county of San Diego, in the State of California, on July 6th, 1869, and was recorded in book 1 of patents therein, at pages 55 and following, reference to which records, for a more complete description of the said land and patent, is hereby made.

II.

That the land, real estate, and premises described in plaintiff's complaint herein are, and at all times have been, a part of, and within the exterior boundaries of, the land, real estate, and premises described hereinabove in this third defense; and that heretofore and since the issuance, delivery, and recording of the said patent, by divers mesne conveyances made, executed, and delivered to it and to its predecessors in interest and title, the defendant herein became and now is the sole and exclusive owner in fee simple absolute of all and singular the land, real estate, and premises described in plaintiff's complaint.

Fourth defense.

And for another and further defense to the bill of complaint herein, defendant alleges:

I.

That on the 11th day of June, 1869, the plaintiff herein made, executed, and delivered to Archibald C. Peachy and William H. Aspinwall its certain instrument in writing, commonly called a patent, wherein and whereby it gave and granted unto the said Archibald C. Peachy and William H. Aspinwall and to their heirs and assigns forever, all and singular the following described land and premises situate, lying, and being in the county of San Diego, and State of California, and described as follows, to-wit:
17 "Lot No. forty (40) in township seventeen (17) south, of range three (3) west; lot No. thirty-seven (37) in township eighteen (18) south, of range three (3) west; and lot No. thirty-eight (38) in township eighteen (18) south, of range two (2) west, of the San Bernardino meridian, containing four thousand one hundred and eighty-five and forty-six one-hundredths (4,185.46) acres."

That the said patent so made, executed, and delivered as aforesaid, was and is recorded in volume 7 at pages 246 to 249 inclusive, in the Record of Patents, in the General Land Office of plaintiff, and was filed for record in the office of the recorder of the county of

San Diego, in the State of California, on July 6th, 1869, and was recorded in book 1 of patents therein, at pages 55 and following, reference to which records, for a more complete description of the said land and patent, is hereby made.

II.

That the land, real estate, and premises described in plaintiff's complaint herein are, and at all times have been a part of, and within the exterior boundaries of, the land, real estate, and premises described hereinabove in this fourth defense; that heretofore and since the issuance, delivery, and recording of the said patent, by divers mesne conveyances made, executed, and delivered to it, and to its predecessors in interest and in title, the defendant herein became the sole and exclusive owner in fee simple absolute of all and singular the land, real estate, and premises described hereinabove in this fourth defense and now is the sole and exclusive owner in fee simple absolute of all and singular the land, real estate, and premises described in plaintiff's complaint.

III.

That the plaintiff herein ought not to have or maintain against this defendant the cause of action attempted to be set out in the
18 complaint herein, for the determination of its alleged easement, estate, and interest in and to the tract of land described in the said complaint, because the said supposed cause of action, if any there be, accrued more than five (5) years next preceding the 4th day of March, 1896, and the patent hereinabove in this defense mentioned and described issued prior to March 3, 1891, to-wit, on June 11, 1869, and the said claim is barred by the provisions of the act of Congress approved March 3, 1891, appearing in 29 United States Statutes at Large, at page 1099, and acts amendatory thereof.

Wherefore this defendant prays that it may be adjudged and decreed to be the sole and exclusive owner in fee simple absolute of the land, real estate, and premises described in plaintiff's complaint, free and clear of any easement, estate, interest, right, title, claim, or demand of any kind, character or description, of plaintiff in or to the same, or any part or parcel thereof, whether for use for the defense or security of the Nation or for any purpose whatsoever; that the property in the complaint herein sought to be condemned be not condemned, and that the condemnation thereof be denied; that if said condemnation be had, that the damages to this defendant and the value of the said land be fixed and assessed at seven million five hundred thousand dollars ($7,500,000.00); that judgment in favor of this defendant and against plaintiff, if said land be condemned, be rendered for the sum of seven million five hundred thousand dollars ($7,500,000.00); for its costs in this behalf expended and for such

other and further relief as to the court may seem meet, equitable, and proper in these premises.

MORRISON, DUNNE & BROBECK,
PETER F. DUNNE,
HERBERT W. CLARK,
Solicitors and Attorneys for Defendant Coronado Beach Company.

19 (Endorsed:) In equity. No. E-34. United States District Court, Southern Division, Southern District of California. United States of America, plaintiff, *vs.* Coronado Beach Company, a corporation, claimant and defendant. Answer of Coronado Beach Company. Filed Oct. 25, 1919. Chas. N. Williams, clerk, by R. S. Zimmerman, deputy clerk. Morrison, Dunne & Brobeck, Crocker Building, San Francisco, Cal., attorneys for claimant and deft.

20 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* CORONADO BEACH COMPANY, A CORPORATION, claimant and defendant.	No. E-34. In equity.

REPLY TO ANSWER OF DEFENDANT.

Now comes the plaintiff, United States of America, and for reply to the counter claims set forth in the answer of the defendant herein, denies and alleges as follows:

I.

Plaintiff denies that defendant at all or any of the times in the complaint mentioned, or at any other time or times, has been or now is the sole or exclusive owner in fee simple absolute, free or clear of any easement, estate, interest, right, title, claim, or demand of any kind, character, or description, of plaintiff, in or to the tract of land mentioned and described in the complaint, or any part thereof; but alleges that the land described in the complaint was granted to one Pedro Carrillo by the then governor of California, Pio Pico, on May 15th, 1846, and that said grant was so made by said governor pursuant to, under the conditions of, and subject to the provisions of, the act of the Mexican Congress of August 18th, 1824, and the rules and regulations of said Congress of November 21st, 1828, and particularly under the provisions of article 5 of said act of August 18th, 1824, and article 8 of said act of November 21st, 1828.

21 II.

Plaintiff denies that the value of the property, land, and premises sought to be condemned by plaintiff amounts to the sum of $7,500,000.00, or to any other sum of money in excess of $————; and

denies that in the event said property, land, and premises described in the complaint herein sought to be condemned in this action are condemned as prayed herein, said defendant will be damaged in the sum of $7,500,000.00, or in any other sum of money in excess of said sum of $————.

III.

Plaintiff denies that the cause of action referred to in Paragraph VII of the second defense set forth in said answer and sued upon in cause No. 257, on the docket of the United States District Court for the Southern District of California, or the issues adjudicated or determined therein, were or are identical with the cause of action sued upon in, or the issues now sought to be raised or now raised by the complaint of plaintiff herein. And plaintiff denies that the final decree of confirmation rendered and entered by the said United States District Court, in said cause No. 257, was, is, or remains a final or other decree upon the merits of said cause, or between the parties thereto or their privies; or that the said court had full power, authority, or jurisdiction over the said parties or the subject matter of said cause, if thereby defendant intends to allege that the court in said Paragraph VII, referred to, had the power, authority, or jurisdiction to enter a decree in said action confirming to the petitioners therein a fee simple title absolute, or any other or further title than that granted to the predecessor in interest of said defendant, to wit, the said grantee under the said Mexican grant of May 15th, 1846; and plaintiff further denies that the decree of said
22 United States District Court in said cause No. 257, confirming the title to the said island or peninsula of San Diego, is or constitutes a bar to so much of the present action of plaintiff as seeks to ascertain or determine in plaintiff an easement, estate, or interest therein or thereto, or to any part of plaintiff's cause of action herein; and denies that the issues tendered by the complaint herein as to such or any matters are res adjudicata, as between the parties hereto.

IV.

Plaintiff denies that on the 11th day of June, 1869, or at any other time, the plaintiff made, executed, or delivered to Archibald C. Peachy or William H. Aspinwall, its certain, or any, instrument in writing wherein or whereby it gave or granted unto the said Archibald C. Peachy or William H. Aspinwall, or to their heirs or assigns, any greater interest, right, title, or estate in or to the land described in Paragraph I of the third defense set forth in said answer, than the interest, right, title, and estate therein adjudged and confirmed in and by the decree of confirmation so entered in said cause No. 257, in said United States District Court; which said right, title, interest and estate plaintiff alleges was at all times, and now is,

subject and subordinate to the easement and estate of plaintiff therein. And plaintiff denies that since the issuance of the said patent, or at any time, by divers, or any, mesne conveyances made, executed, or delivered to it, or to its predecessors in interest or title, the defendant herein became, or now is, the sole or exclusive owner in fee simple absolute of all or singular the land, real estate, or premises described in plaintiff's complaint.

V.

23 Plaintiff denies that the said claim and cause of action set forth in the complaint herein, or any part thereof, is barred by the provisions of the act of Congress approved March 3, 1891, appearing in 29 United States Statutes at Large, at page 1099, or by any acts amendatory thereof, or at all.

Wherefore plaintiff prays for judgment according to the prayer set forth in its bill of complaint herein.

A. MITCHELL PALMER,
Attorney General of the United States.
GEO. J. DENIS,
Special Assistant to the Attorney General.
J. ROBERT O'CONNOR,
United States Attorney, Southern District of California,
Attorneys for Plaintiff.

(Endorsed:) In equity No. E-34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, vs. Coronado Beach Company, a corporation, claimant and defendant. Reply to answer of defendant. Filed Oct. 30, 1919. Chas N. Williams, by R. S. Zimmerman, deputy clerk. Geo. J. Denis, 832 Van Nuys Building, Los Angeles, Cal. Attorney for plaintiff.

24 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, plaintiff, v. CORONADO BEACH COMPANY, A CORPORATION, defendant.	No. E-34.	In equity.

DECREE.

This cause came to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

That the plaintiff, United States of America, has no easement, estate, interest, right, title, claim, or demand of any kind, character, or description in or to the land mentioned and described in the bill

of complaint herein, and more particularly described, designated, and set out in the said bill of complaint as the whole of North Island, in the harbor of San Diego, in the county of San Diego and State of California, or in or to any part or parcel thereof, for use for the defense or security of the Nation, or for any purpose whatsoever or at all, except that as to those certain pieces or parcels of land within the exterior limits of the said North Island which are described in that certain deed from Coronado Beach Company, a corporation, to the United States of America, recorded September 12, 1901, in book No. 312 of deeds, at page 185 et sequitur, of the records
25 of said county of San Diego, California, containing thirty-eight and fifty-six hundredths (38.56) acres, more or less, and in that certain deed from Coronado Beach Company, a corporation, to the United States of America, recorded in book No. 211 of deeds, at page 381 et sequitur, of the records of said county of San Diego, California, containing eighteen and eighty-five hundredths (18.85) acres, more or less, the United States of America is the owner in fee simple of said certain pieces or parcels;

That the claimant and defendant herein, Coronado Beach Company, a corporation, was, at the time of the commencement of this suit ever since has been, and now is the sole and exclusive owner in fee simple absolute of all and singular the land mentioned, designated, and described in the bill of complaint herein and more particularly described, designated, and set out in the said bill of complaint as the whole of North Island, in the harbor of San Diego, in the county of San Diego and State of California, free and clear of any easement, estate, interest, right, title, claim, or demand of any kind, character, or description, of plaintiff, the United States of America, in or to the same, or in or to any part or parcel thereof, for use for the defense or security of the Nation or for any purpose whatsoever or at all, except as to the aforesaid certain pieces or parcels hereinabove in this decree specified and of which the United States of America is the owner in fee simple;

That the title of claimant and defendant, Coronado Beach Company, a corporation, in and to the land in the said bill of complaint described, and in and to every part and parcel thereof, except as to the aforesaid certain pieces or parcels of land hereinabove in this decree specified, be, and the same hereby is, quieted and estab-
26 lished against any and all claims and demands whatsoever of plaintiffs, the United States of America.

Done at Los Angeles, this 15th day of March, 1920.

TRIPPET, *Judge.*

Approved as to form, as provided in rule 45.

GEO. J. DENIS,
Special Assistant to the Attorney General of the United States.

Decree entered. Recorded this 15th day of March, 1920.

CHAS. N. WILLIAMS, *Clerk.*
By ERNEST J. MORGAN, *Deputy Clerk.*

27 (Endorsed:) E 34 Eq. United States District Court Southern Division Southern District of California. United States of America, plaintiff, vs. Coronado Beach Co., a corporation, claimant and defendant. Decree filed Mar. 15, 1920. Chas. N. Williams, clerk, Ernest J. Morgan, deputy, Morrison, Dunne & Brobeck, Crocker Building, San Francisco, Cal.

28 In the District Court of the United States, Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CORONADO BEACH COMPANY, A CORPORATION, DEFENDANT.
No. E–34. Equity.
Conclusions of the court.

A. Mitchell Palmer, Attorney General; Geo. J. Denis, special assistant to the Attorney General; Robert O'Connor, United States attorney for plaintiff.

Morrison, Dunne & Brobeck, of San Francisco, California, for defendant.

This suit is being prosecuted in pursuance of an act of Congress of date July 27, 1917 (40 U. S. St. L. 247). This act provides that the suit shall be prosecuted in accordance with the laws of the State of California, relating to the condemnation of property for public use. The suit is for the determination and appraisement of any rights the defendant may have in North Island, in the harbor of San Diego, California, and for the condemnation of such rights. The Government took possession of this island and now seeks to condemn the defendant's interest therein, under the above-mentioned act, for use for national defense and in connection therewith as sites for permanent aviation stations for the Army and Navy and for aviation school purposes.

On August 18, 1824, the sovereign general constituent congress of the United Mexican States issued a decree, concerning colonization and settlement of the national lands of said Republic. This decree
29 provides: * * * (Art. 4) That those territories within ten leagues of the seacoast can not be colonized "without the previous approval of the supreme general executive power." (Art. 5) "If for the defense or security of the nation the Federal Government shall find it expedient to make use of any portion of these lands for the purpose of constructing warehouses, arsenals, or other public edifices, it may do so, with the approbation of the general congress," etc. * * * (Art. 16) That the Government, in conformity with the principles established in this law, will proceed to the colonization of the territories of the Republic. On November 21, 1828, in pursuance of article 15, the Government, through his excellency, issued rules and regulations for the colonization of the territories of the Republic.

The Mexican Government granted the land in controversy to one Pedro Carillo, a Mexican citizen, on May 15th, 1846. This grant was made by Pio Pico, the governor of California, and recites:

"Whereas Don Pedro Carillo has for his personal benefit and that of his family petitioned for the land known as the island or peninsula in the port of San Diego, the proper examinations being previously made, using the faculties which are conferred on me in the name of the Mexican nation, I have granted him the aforesaid land in decree of this day, declaring to him the ownership of it by these presents, in conformity with the law of August 18, 1824, and the regulations of Nov. 21, 1828, subject to the approval of the most excellent departmental assembly, and under the following conditions"; etc.

This recitation was made in the grant to comply with article 8 of the Rules and Regulations of November 21, 1828. It does not appear in the record that the grant was made with the approval of the supreme general executive power, as provided by article 4 of the decree of August 18, 1824. By virtue of the treaty of Guadalupe Hidalgo, Congress, on March 3, 1851, enacted a law entitled, "An act to ascertain and settle the private land claims in the State of California."

Pursuant to this act of Congress, Billings and others, as-
30 signees of Carillo, the Mexican grantee, instituted proceedings against the United States before the commissioners created by said act, and subsequently, in the District Court of the United States, to have the said title confirmed to them. The board of commissioners rejected the claim of Billings and others, but the district court confirmed it on the 12th day of January, 1857. The only parties to said suit were Billings and others, as plaintiffs, and the United States as defendant. However, before a patent was issued by the United States for the land, other parties were substituted for Billings and others. The patent issued to the successors of Carillo makes the following recitation:

"Now know ye, that the United States of America, in consideration of the premises and pursuant to the provisions of the act of Congress aforesaid of 3d March, 1851, and the legislation supplemental thereto, have given and granted and by these presents do give and grant unto the said Archibald C. Peachy and William H. Aspinwall and their heirs the tract of land embraced and described in the foregoing survey, but with the stipulation that in virtue of the 15th section of the said act the confirmation of the said claim and this 'patent' shall not effect the interest of third persons."

"To have and to hold the said tract with the appurtenances unto the said Archibald C. Peachy and William H. Aspinwall and to their heirs and assigns forever, with the stipulations aforesaid."

The title acquired under this patent passed to the defendant.

The plaintiff claims that the grant to Carillo created a fee in the grantee, subject to the reservation provided in article 5 of the act of August 18, 1824, above quoted; and claims that the patent was simply a confirmation of such title and that the right reserved to

the Mexican Government passed to the United States by virtue of the treaty of Guadalupe Hidalgo.

On the contrary, counsel for the defendant contends that the grant to Carillo passed a fee-simple title, and claims that the first
31 eight articles of the decree of 1824 referred only to foreign colonization and not to grants made to citizens of Mexico, and is applicable only to States and not to the territory of the Republic.

In Arguello *v.* U. S., 18 How., 539, at the December term, 1855, the Supreme Court, in discussing this question, used the following language:

"It is evident from an inspection of this act of 1824 and consequent regulations of 1828, that they contemplate two distinct species of grants. 1. Grants to impresarios, or contractors, sometimes called pobladores, who engaged to introduce a body of foreign settlers. 2. The distribution of lands to Mexican citizens, 'families or single persons.'

"While these countries were under the dominion of Spain, the governors had authority to make grants of the latter description, while those of the former required the sanction of the king. As examples of such colonization contracts in Louisiana, those of the Marquis of Maison Rouge and the Baron de Bastrop may be referred to. They came under the consideration of this court in the cases of the United States *v.* King and Coxe, 7 How., 833, and the United States v. Philadelphia, 11 How., 609. These contracts were executory. They designated a certain tract of country, which was 'appropriated' to be gratuitously distributed among the colonists, but did not confer an absolute or immediate title to the whole tract to be colonized by the contractor. 'As the object of these grants was to obtain a body of foreign agriculturists, who would settle together under one common leader, in whom the Government could confide, liberal terms were offered. A body of such colonists, besides opening, cultivating, improving the wild lands, served as a protection against the Indians and created inducements to others of their countrymen to join them, and thus promote the early settlement of the Province.'

"The same policy was pursued by the Mexican Government. Besides the desire of fortifying themselves against apprehended attempts at subjugation by Spain, they had before their eyes the prosperous growth of the United States consequent on the liberal encouragement of European immigration. But, while anxious to encourage immigration of foreigners, they nevertheless, entertained some jealousy, well founded perhaps, that in case of conflict with a powerful neighbor, their sympathies and allegiance might not be safely relied on.

"Hence the caution exhibited in requiring the approval of the supreme government 'to grants made to impresarios' for them to 'colonize with many families.' But while a judicious policy might prevent the settlement of large bodies of foreigners on the boundaries and seacoast, we can not impute to them the weakness or folly of con-

fining their native citizens to the interior and thus leaving their seacoast a wilderness without population. On the contrary, the same considerations of policy which excluded foreigners would encourage the settlement of natives within those bounds.

32 "The statute books of Mexico abound in acts offering every inducement to Mexican families to settle on the frontiers; proffering gratuitous grants of land and of agricultural implements, expenses of their voyage, maintenance for a year, and leave to import certain articles free of duty. The miltiary posts in the territory were on the seacoast; and it would be strange policy, indeed, which would isolate the posts intended for the protection of settlers, and compel them to dwell among the savages without protection. Numerous enactments also exhibit their cautious jealously with respect to foreigners, and especially their coterminous neighbors on the north. An act of 1828 directs all Spaniards living on the coast of the Mexican Gulf to retire twenty leagues from it. Another, of 1830, prohibits settlements of foreigners from coterminous nations or any part of their border States.

"A careful examination of this decree of 1824, and regulations of 1828, will show that their letter conforms to this policy, pursued with so much solicitude. The title to the decree shows its subject to be 'colonization.' The term colonization implies immigration in numbers. The first section speaks of the subjects of such colonization as 'foreigners.'

" It guarantees to them security of person and property. The second and third describe the lands open to such colonists, and require the States to make rules and regulations for colonization within their limits. The fourth (whose construction is now under consideration) forbids the colonization of the territory comprehended within twenty leagues of the boundaries of any foreign State and within ten leagues of the seacoast without the consent of the supreme executive power. The sixth section provides that no duties shall be imposed on the entrance of 'foreigners.' The seventh forbids the immigration of 'foreigners' to be prohibited prior to 1840, except of some particular nation and under peculiar circumstances. The seventh indicates the possibility that the Government may find it necessary to take measures of precaution for the security of the federation with respect to foreigners who come to colonize.

"These are all the sections of the act which refer directly to colonization. The subjects of it are called 'foreigners' throughout. They are the only persons to whom the fourth section has any reference or application.

"The 9th section first speaks of the 'distribution of lands' to individuals and families as distinguished from colonists, and provides that Mexican citizens should be preferred, without distinction of classes, except as to those who have rendered special service to their country.

"Thus we have seen that the first eight sections apply wholly to colonists and foreigners. It would be contrary to every canon of construction to apply the provisions made for them to the subject introduced for the first time in the 9th section, or to select the 4th section as applicable to native citizens, while the other seven are confined by their terms to 'foreigners.'

"The regulations of 1828, made for the purpose of carrying
33 into execution the law of 1824, evidently give this construction to that act. It makes a clear distinction between empresario contracts for colonization and grants to Mexican citizens. In conformity with the 4th section of that act, it requires grants to empresarios to have the sanction of the supreme government, while those made to individuals or families need only the approval of the territorial deputation. This may be said to be a legislative construction of the act of 1824 and demonstrates that this restraint of grants within the lateral (sic., littoral) leagues had no application except to colonies of foreigners."

Necessarily, the district court, in confirming this grant, was guided by the decision on the Arguello case. Article 5 of the act of 1824 was not involved in the Arguella case, except incidentally, but the reasoning in that case necessarily precludes the idea that article 5 could apply to citizens of Mexico, while all the other articles, from 1 to 8, inclusive, apply only to foreigners. It will be seen that the Supreme Court includes article 5 among the eight articles, which, it holds, apply to foreigners and not to citizens. We might well use the language of the Supreme Court, above quoted, making the reference to article 4 read article 5, thus:

"We have seen that the first eight sections (or articles) apply wholly to colonists and foreigners. It would be contrary to every canon of construction to apply the provisions made for them to the subject introduced for the first time in the ninth section, or to select the fifth section as applicable to native citizens, while the other seven are confined by their terms to foreigners."

It would also seem that the Mexican Government could with as much propriety have made a distinction between a Mexican citizen and a foreigner concerning the right of occupancy, as provided in article 5, as to have made the distinction in article 4.

It seems to the court that this decision of the Supreme Court of the United States is controlling upon this court.

The court might well stop here without further comment, but the question of res adjudicata has been carefully investigated, and
34 it is not inappropriate to make the following comment:

Section 15 of the act of March 3, 1851, provides:

"That the final decrees rendered by the said commissioners, or by the District or Supreme Court of the United States, or any patent to be issued under this act, shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons."

In construing this section the Supreme Court, in the case of Botiller *v.* Dominguez, 130 U. S., 238, p. 248, says:

"The fifteenth section declares that the final decrees rendered in such cases, or any patent issued under the act, 'shall be conclusive between the United States and the said claimants only'; that is to say, it shall be conclusive on the United States and on the claimants, but it shall not conclude the rights of anybody else, if in a position to contest the action of the board.

* * * * * * *

"When this was done, the aim of the statute was attained. The order of the commissioners or the decree of the court established as between the United States and the private citizens the validity or the invalidity of such claims, and enabled the Government of the United States, out of all its vast domain, to say 'this is my property,' and also enabled the claimant under the Mexican Government who had a just claim, whether legal or equitable, to say 'this is mine.' This was the purpose of the statute; and it was equally important to the object which the United States had in the passage of it, that claims under perfect grants from the Mexican Government should be established, as that imperfect claims should be established or rejected.

* * * * * * *

"We are unable to see any injustice, any want of constitutional power, or any violation of the treaty, in the means by which the United States undertook to separate the lands in which it held the proprietary interest from those which belonged, either equitably or by strict legal title, to private persons."

In the Botiller case the court was deciding a controversy between two claimants in an action wherein the United States was not a party, but what the court said in that case is appropriate to a decision in the case at bar. The statute and said decision as to the effect that the patent shall be conclusive on the United States. Certainly if it is conclusive on anybody in view of this statute it ought to be conclusive on the United States. A patentee under this statute could not assert with very much confidence concerning the land he got, that "this is my property," if the United States could step in at any time and take possession of it forever.

This court is of the opinion that the claim of the plaintiff is not well made for the foregoing reasons.

OSCAR A. TRIPPET,
Judge.

The defendant will prepare a decree and proceed as provided in rule 45 of this court.

Dated December 29, 1919.

(Endorsed:) Original. No. E-34 Equity. U. S. District Court, Southern District of California, Southern Division. United States of America, plaintiff, *vs.* Coronado Beach Company, a corporation, defendant. Conclusions of the court. Filed Dec. 29, 1919, Chas N. Williams, clerk, by R. S. Zimmerman, deputy.

37 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, plaintiff, *vs.* THE CORONADO BEACH COMPANY, a corporation, claimant and defendant.	No. E–34. *Notice of motion to rescind, vacate, and set aside decree.*

To the above-named defendant, and to Messrs. Morrison, Dunne & Brobeck, Peter F. Dunne, Esq., Herbert W. Clark, Esq., R. G. Dilworth, Esq., and James E. Wadham, Esq., its attorneys:

You and each of you will please take notice that the plaintiff herein, United States of America, will move the court in the above entitled action, on Monday the 31st day of May, 1920, at the hour of 10 o'clock, a. m., of said day, or as soon thereafter as counsel can be heard, to rescind, vacate, and set aside the decree made and entered in said action on the 15th day of March, 1920, quieting the defendant's title to the land and premises described in said decree, upon the ground that said decree is against law.

Said motion will be made and based upon the pleadings, files, records, and exhibits in said cause.

A. MITCHELL PALMER,
Attorney General of the United States.
GEO. J. DENIS,
Special Assistant to the Attorney General.
J. ROBERT O'CONNOR,
United States Attorney,
Southern District of California,
Attorneys for Plaintiff.

38 Points and authorities: Foster's Federal Practices; Bronson *v.* Schulten, 104 U. S., 26 L. Ed. 799; Rockwell, Spanish & Mexican Law; Arguello *v.* United States, 18 How., 15 L. Ed. 478; The cases cited on oral argument by plaintiff.

39 No. E–34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, *vs.* The Coronado Beach Company, defendant. Notice of motion to rescind, vacate, and set aside decree. Filed May 20, 1920. Chas. N. Williams, clerk, by Emyr E. Jones, deputy clerk.

40 At a stated term, to-wit, the January, A. D. 1920, term, of the District Court of the United States within and for the Southern Division of the Southern District of California, held in the court room thereof, in the city of Los Angeles, on Tuesday, the 1st

day of June, in the year of our Lord one thousand nine hundred and twenty.

Present: The honorable Oscar A. Trippet, district judge.

UNITED STATES OF AMERICA, PLAINTIFF, vs. CORONADO BEACH COMPANY, DEFENDANT.	No. E–34 equity. SD.

This cause coming on at this time for hearing on (1) on motion to rescind, vacate, and set aside decree; and (2) for motion for new trial; Geo. J. Denis, Esq., special assistant to the Attorney General, and Gordon Lawson, Esq., assistant U. S. attorney, appearing as counsel for the plaintiff, and Herbert W. Clarke, Esq., appearing as counsel for the defendant, and W. C. Wren appearing as shorthand reporter of the proceedings and testimony, and a judgment having been signed by the court in open court and directed to be filed herein, and recorded in judgment book No. 2 for the southern division at pages 565 to 572, both inclusive; and

Geo. J. Denis, Esq., special assistant to the Attorney General, having presented the argument in support of motions to rescind, vacate, and set aside decree, and of motion for new trial; and

Now, at the hour of 11.28 o'clock a. m., the court having taken a recess; and

41 Now, at the hour of 11.36 o'clock a. m., the court having reconvened, and counsel for respective parties being present as before; and W. C. Wren being present as shorthand reporter; and

Geo. J. Denis, Esq., of counsel, as aforesaid, for the plaintiff, having resumed the argument in support of the aforesaid motions; and

Now, at the hour of 12.00 o'clock noon, it is ordered that a recess be taken until the hour of 2 o'clock p. m. of this day, and this cause is continued to that time.

Now, at the hour of 2 o'clock p. m., the court having reconvened, and counsel for respective parties being present as before; and W. C. Wren being present as shorthand reporter; and

Geo. J. Denis, Esq., of counsel, as aforesaid, for the plaintiff, having presented further arguments in support of said motions to rescind, vacate, and set aside the decree and for motion for a new trial; and

Herbert W. Clarke, Esq., of counsel, as aforesaid, for the defendant, having presented the argument in opposition to said motions; and

Geo. J. Denis, Esq., of counsel, as aforesaid, for the plaintiff, having replied thereto; and

The Court at this time gives its oral opinion and orders that said motions to rescind, vacate, and set aside the decree and motion for new trial be, and they hereby are, denied.

42 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE CORONADO BEACH COMPANY, A CORPORATION, CLAIMANT and defendant. | No. E-34.

STATEMENT OF EVIDENCE TO BE INCLUDED IN TRANSCRIPT ON APPEAL.

The preliminary question, to wit, the determination of any rights said defendant may have in North Island, in San Diego Bay, California, over and beyond any rights thereto in the United States, was heard and determined upon the foregoing bill of complaint, the defendant's motion to dismiss said bill of complaint, the defendant's answer to said bill of complaint, and the plaintiff's reply to the answer of defendant, and upon the following proceedings and evidence:

It was stipulated by and between the parties plaintiff and defendant:

(1) That the premises described in the complaint herein, to wit, North Island, in the harbor of San Diego, in the county of San Diego, California, are included within and are a part of the land described in that certain decree of confirmation rendered by the United States District Court for the Southern District of the State of California at the December term thereof, in the year 1856, in a proceeding therein pending entitled Frederick Billings et al., assignees of Bezar Simmons, vs. the United States, numbered 257 on the docket of said court; and that the said premises are included within and are a part of the land described in that certain
43 patent dated June 11, 1869, and issued by the United States of America to Archibald C. Peachy and William H. Aspinwall, which said patent is described and referred to in the third and fourth defenses interposed by the defendant herein to the complaint of the plaintiff.

(2) That the defendant, Coronado Beach Company, has succeeded to and, with the exception of two small tracts aggregating 57.41 acres, more or less, heretofore conveyed by the defendant to the plaintiff, is now the owner of all and singular the right, title, and interest of the confirmees named and described in the said decree of confirmation in said proceeding number 257 in and to North Island aforesaid, and has succeeded to and is now, with said exception, the owner of all the right, title, and interest of the said patentees, Archibald G. Peachy and William H. Aspinwall, in and to said North Island.

(3) That the defendant, Coronado Beach Company, has paid all taxes levied or assessed upon the premises described in the complaint herein since the issuance of the said patent dated June 11, 1869.

C. W. CALBREATH, called on behalf of plaintiff, duly sworn, testifies:

My name is C. W. Calbreath. I live in San Francisco, and am deputy clerk of the United States District Court for the Northern District of California. I have produced, under the subpœna ad testificandum, the record in case No. 257, docket of the United States District Court for the Southern District of California.

Mr. DENIS. Now, I propose to offer copies of certain parts of that transcript that I deem material.

I offer what is designated on page 11 of the certified copy of the transcript of case No. 257, as the translation of espediente,
44 being the petition of Pedro C. Carrillo to the governor of California, asking for a grant of the island or peninsula in the port of San Diego, with the endorsements thereon. Said document, filed as plaintiff's Exhibit 10, is in the words and figures following, to wit:

Translation of espediente.

SAN DIEGO, *April 21st, 1846.*

The 2d magistrate of this town will be pleased to inform relative to the petition made by Don Pedro C. Carrillo if the place he petitions for is vacant, or if it belongs to any individual, corporation, and this being complied with, he will return the espediente to this subprefecture for the other purpose.

ARGUELLO,
Senior Sub Prefect of the Portido of San Diego.

Pedro C. Carrillo, native of this department of California and resident in this port, before you with due respect and in conformity with law, appears and says: That being in want of the proper land for the breeding of cattle, both large and small, and horses, and desirous of encouraging these kinds of property he names a vacant land in the limits of this port in the southern part known by the name of "la Ysla" or peninsula which the port of San Diego forms, the which contains a little more or less, two leagues or "sition" according to the map which he transmits, said land being fit for a cattle farm, for which purpose he asks for it, and is founded on the north by the "estero" (creek) of said port, east by the place of Don Augustin Meliso; south by the sea, and west by the bay and ship anchorage, and he prays you that after the informations which you may think proper to take, you will be pleased to grant it to him, passing the espediente to his excellency the governor of the department that he may have the goodness to order the corresponding title of ownership to be issued to him.

45 Wherefore, I pray and beseech you to be pleased to provide in the manner and form which I have asked, in which I will receive grace and favor; swearing not to act from malice, and what-

ever else may be necessary; admitting this on common paper for want of stamped.

San Diego, April 21st, 1846.

(Signed) PEDRO C. CARRILLO.

Mr. DENIS. I offer the reports on that petition, found on page 12, and the endorsement on the espediente translation, also found on page 12, under date of April 21, 1846, and signed by Pio Pico and Jose Matias Moreno, secretary. Said document, filed as Plaintiff's Exhibit No. 11, is in the words and figures following, to wit:

SAN DIEGO, *April 21', 1846.*

The place which citizen Pedro C. Carrillo asks for is at present entirely vacant, and does not belong to any ownership, and consequently may be granted to him.

(Signed) JUAN MARIA OSUNA.

MOST EXCELLENT SIR: From the information asked with respect to the place of "La Ysla" or peninsula, which citizen Pedro C. Carrillo—it results that it is entirely vacant, so that it being granted would cause no injury to a third person; wherefore, if the superior authority thinks proper, it can grant it to the petitioner, as he is without any land of his own and combines in his person the requisits of colonization.

San Diego, April 21', 1846.

(Signed) JOSE R. ARGUELLO.

ANGELES, *May 15', 1846.*

Having seen the petition with which this espediente commences, the necessary reports, with all other things which were
66 represented and deemed proper to be seen in conformity with the law of August 18th, 1824, and regulation of November 21', 1828, I declare Don Pedro Carrillo owner in fee of the land known or named "Isla" or peninsula in the port of San Diego, towards the part of —— of the anchorage. Let the corresponding title be issued and reserve the espediente in order to submit it to the approval of the most excellent departmental assembly.

Pio Pico, constitutional governor of California, thus ordered, decreed, and signed, I certify.

(Signed) PIO PICO.
(Signed) JOSE MATIAS MORENO,
Secretary.

Filed in office Sept. 22d, 1852.

GEO. FISHER, *Sec'y.*

Mr. DENIS: I offer in evidence a translation of the grant by Pio Pico, constitutional governor of the department of California, to Pedro Carrillo, of date May 15, 1846, found on pages 14 and 15 of

the certified copy of the transcript of case No. 257 above referred to. The document last above offered, filed as plaintiff's Exhibit No. 7, was read to the court, and is in the words and figures following, to-wit:

Pio Pico, constitutional governor of the department of California. (Seal.)

Whereas Don Pedro Carrillo has for his personal benefit and that of his family petitioned for the land known as the island or peninsula in the port of San Diego, the proper examinations being previously made, using the faculties which are conferred on me in the name of the Mexican Nation, I have granted him the aforesaid land in decree of this day, declaring to him the ownership of it by these presents, in conformity with the law of August 18', 1824, and the regulations of Nov. 21', 1828, subject to the approval of the
47 most excellent departmental assembly, and under the following conditions:

1'. He may enclose it, without prejudice to the crossings, roads, and servitudes, and enjoy it freely and exclusively, making such use or cultivation of it as may best suit him.

2d. He shall request the proper magistrate to give him juridical possession in virtue of this order, by whom the boundaries will be marked out.

3d. The land of which donation is made is two square leagues and is bounded on the north by the estero of the port of San Diego toward the town, east by the end of the rancho of San Augustin Melino, south by the sea, and west by the bay or anchorage for ships, as explained by the map which goes with the espediente. The magistrate who may give the possession will cause it to be measured in conformity with the ordinance.

In consequence, I order that the present title being held as firm and valid, note be made of it in the corresponding book and it be delivered to the party interested for his security and other purposes.

Given in the city of Los Angeles, on this common paper for want of stamped, on the 15th of May, 1846.

(Signed) PIO PICO,
(Signed) JOSE MATIAS MORENO,
Secretary.

Note has been made of this superior order in the proper book.
(Signed) MORENO.

Note has been made of this superior order on (page) 5, over in the proper book in this sub-prefecture in my charge.
(Signed) JOSE R. ARGUELLO.

Filed in office April 20th, 1852.
GEO. FISHER, *Sec'y.*

48 Mr. DENIS. I offer in evidence petition of Billings and others, assignees of Bezar Simmons, to the commissioners to settle private land claims in California, appointed under the act of 1851.

The document last above offered, filed as Plaintiff's Exhibit No. 1, is in the words and figures following, to-wit:

To the honorable commissioners to settle private land claims in California:

The petitioners, Frederick Billings, James R. Bolton, and Henry W. Halleck, assignees of Bezar Simmons, respectfully show:

That on the 15th day of May, 1846, Pio Pico, Governor of California, by virtue of authority in him vested, granted to Pedro C. Carrillo, the island or peninsula of San Diego, situate in the present county of San Diego, containing two quare leagues, with the boundaries described in the grant, a copy of which is submitted herewith marked "A," with a translation marked "B."

That on the 20th day of October, 1846, the said Pedro C. Carrillo sold and conveyed the said tract of land to the said Bezar Simmons, a copy of which conveyance is submitted herewith marked "C," with a translation marked "D."

That on the 3d day of September, A. D. 1850, the said Bezar Simmons, by deed of assignment, conveyed the said tract of land to the petitioners, a copy of which deed of assignment is submitted herewith marked "E."

And the petitioners further show that the said land has not been surveyed by the Surveyor General of the United States, such survey, from the nature of the case being unnecessary, the boundaries being natural, and not to be mistaken.

That since the year 1846, the said Pedro C. Carrillo, Bezar
49 Simmons, and the petitioners have been, and the petitioners now are, in the quiet, peaceful, and undisputed possession of the said tract of land.

That they know of no conflicting claim.

That they rely for confirmation of title upon the original papers, copies of which are submitted herewith; upon the records and minutes in the archives now under the charge of the Surveyor General; and upon such other and further proofs as they may be advised are necessary.

Wherefore they pray the commissioners to confirm to them the said tract of land.

By their attorneys: HALLECK, PEACHY & BILLINGS.

Filed in office April 20th, 1852.

GEO. FISCHER, *Sec'y.*

Mr. DENIS. I offer in evidence a certified copy of the decree of confirmation by the District Court of the United States for the Southern District of California, at the December term, 1856, in case No. 237.

The document last referred to filed as Plaintiff's Exhibit No. 6, is in the words and figures following, to-wit:

In the District Court of the United States within and for the Southern District of California. Hon. Isaac S. K. Ogier, judge. December Term, 1856.

THE UNITED STATES, APPELEE,
vs.
FREDERICK BILLINGS & OTHERS, APPELLANTS. } No. 257.

Transcript from the board of land commissioners, No. 188.

This cause coming on to be heard on appeal from the decision of the board of land commissioners to ascertain and settle private land claims in California, upon the transcript
50 of the proceedings and decision of said board and the papers and evidence upon which said decision was founded, and also upon other evidence taken and filed in this court, and counsel for the respective parties having been heard, it is:

Ordered, adjudged, and decreed, that the decision of said board of land commissioners rejecting the claim of the appellants, Frederick Billings, and others be, and the same is hereby, reversed.

And it is further ordered, adjudged, and decreed that the title of the appellants, Frederick Billings and others, to the lands claimed by them, as set forth and described in their petition to the said board of commissioners, and the documentary and other evidence in this case, is a good and valid title, and that their claim to the said land be, and the same is hereby, confirmed.

The land of which confirmation is hereby made is in quantity two square leagues and no more, is known by the name of the "Island or peninsula of San Diego," is situated in the county of San Diego, and is bounded on the north by the estero of the port of San Diego towards the town, east by the end of the ranch of San Augustin Melijo, south by the sea, and west by the anchorage for ships, according to the documents of title and map to which reference is had; if the quantity within said boundaries is less than two square leagues, then the confirmation hereby made is for the whole tract, but if the quantity within said boundaries exceeds two square leagues, the the confirmation hereby made is made for two square leagues and no more.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the S. Dist. of Cal.

(Endorsed:) Filed Jany. 12, 1857, C. Sims, Clerk.

51 Mr. DENIS. I will offer in evidence the order of substitution, merely as explanatory of the patent, substituting Peachy and Aspinwall for Billings and his associates as confirmees under the decree of confirmation.

The document last offered, filed as Plaintiff's Exhibit No. 9, is in the words and figures following, to wit:

Order substituting parties.

At a stated term of the United States District Court held at San Francisco on the seventh day of May, A. D. 1867.
Present, Hon. Ogden Hoffman, judge.

FREDERICK BILLINGS ET AL., ASSIGNEES OF BEZAR Simmons, dec'd., claimants & appellants, *vs.* THE UNITED STATES, APPELLEES.	No. —. Isla de San Diego.

Now at this day, on motion of counsel for claimants, and filing deeds of conveyance in support thereof showing title to the premises known as the island or peninsula of San Diego, claimed by and confirmed to the aforesaid claimants and appellees to be in Archibald C. Peachy and William H. Aspinwall, the said Peachy being the owner of the one undivided moiety and the said Aspinwall of the other undivided moiety.

Now, therefore, it is hereby ordered that the said Archibald C. Peachy and William H. Aspinwall be, and they are hereby, substituted in the place and lieu of Frederick Billings et al., assignees of Bezar Simmons herein, and that this cause be and the same is revived in the names of said Archibald C. Peachy and William H. Aspinwall, as claimants and confirmees herein, and that all further proceedings had herein be in their names.

OGDEN HOFFMAN, *Dist. Judge.*

(Endorsed:) Filed May 7, 1867. Geo. C. Gorham, clk., by John O. Wheeler, dep.

52 Mr. DENIS. I offer in evidence copy of the patent from the United States of America to Archibald C. Peachy and William H. Aspinwall, dated June 11, 1869. There is a map attached to it, but I haven't it. Counsel on the other side have it. Our stipulation, however, provides that the land described in the patent, with the exception mentioned, is the land in controversy here and the land also granted by the grant of May 15, 1846. Do you care to introduce this in evidence [exhibiting map]?

Mr. CLARK. Well, just for the sake of completeness, that is all.

The COURT. Is it a copy of the map that went with the patent?

Mr. DENIS. Yes.

The document last offered, together with the blue print map filed under same date and number, filed as plaintiff's Exhibit No. 8, is in the words and figures following, to-wit:

The United States of America, to all to whom these presents shall come, greeting:

Whereas it appears from a duly authenticated transcript filed in the General Land Office of the United States that, pursuant to the provisions of the act of Congress approved the third day of March, one thousand eight hundred and fifty-one, entitled "An act to ascertain and settle the private land claims in the State of California," Frederick Billings, James R. Bolton, and Henry W. Halleck, as claimants, filed their petition on the 20th day of April, 1852, with the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Fran-
53 cisco, in which petition they claimed the confirmation of their claim to a tract of land called the "island or peninsula of San Diego," containing two square leagues, more or less, in the county of San Diego and State aforesaid, said claim being founded on a Mexican grant to Pedro Carrillo, made on the 15th day of May, 1846, by Pio Pico, then constitutional governor of the department of California;

And whereas the board of land commissioners aforesaid, by a decree rendered October 31st, 1854, rejected said claim, which decree or decision was on appeal reversed by the District Court of the United States for the Southern District of California at its December term, 1856, in the cause entitled: "The United States, appellees, ads. Frederick Billings and others, appellants," the decision of said court being as follows: "It is ordered, adjudged, and decreed that the decision of said board of land commissioners rejecting the claim of the appellants, Frederick Billings and others, be, and the same is hereby, reversed.

"And it is further ordered, adjudged, and decreed that the title of the appellants, Frederick Billings and others, to the land claimed by them as set forth and described in their petition to the said board of commissioners and the documentary and other evidence in this case, is a good and valid title, and that their claim to the said land be, and the same is hereby, confirmed.

"The land of which confirmation is hereby made is in quantity two square leagues, and no more, is known by the name of the 'island or peninsula of San Diego,' is situated in the county of San Diego, and is bounded on the north by the estero of the port of San Diego, towards the town, east by the end of the land of San Augustine Melijo, south by the sea, and west by the anchorage for ships,
54 according to the document of title and maps to which reference is had.

"If the quantity within said boundaries is less than two square leagues, then the confirmation hereby made is for the whole tract, but if the quantity within said boundaries exceed two square leagues, then the confirmation hereby made is made for two square leagues and no more," and appeal having been taken from said decree to the Supreme Court of the United States, said appeal was dismissed

at the December term, 1863, of said Supreme Court, as appears from a duly authenticated transcript on file in the General Land Office, whereupon the aforesaid district court, by a decree filed May 7th, 1867, ordered, "that said claimants be and they are hereby allowed to proceed under said decree of confirmation as under a final decree."

And whereas it further appears from a duly authenticated transcript on file in the General Land Office that at a stated term of the United States District Court held at San Francisco, on the 7th day of May, A. D. 1867, a decree was rendered in this case substituting Archibald C. Peachy and William H. Aspinwall in the place and lieu of Frederick Billings et als., and ordering that this cause be and the same is revived in the name of said Archibald C. Peachy and William H. Aspinwall as claimants and confirmees herein and that all further proceedings had herein be in their names";

And whereas, under the 13th section of said act of 3d March, 1851, and the supplemental legislation, and in accordance with the proceedings had pursuant to said act and supplemental legislation, there has been deposited in the General Land Office a return with a plat of the survey of the said claim confirmed as aforesaid authenticated by the signature of the United States Surveyor General of the State of California, whereby it appears that said claim has been
55 designated as lot numbered thirty-seven in township eighteen south, of range three west, and lot numbered thirty-eight in township eighteen south, of range two west, of the San Bernardino meridian, containing four thousand one hundred and eighty-five acres and forty-six hundredths of an acre, situated in the State of California, the plat in the aforesaid return of survey being in the words and figures as follows, to wit:

(Plat inserted.)

56 Now know ye that the United States of America, in consideration of the premises, and pursuant to the provisions of the act of Congress aforesaid of 3d March, 1851, and the legislation supplemental thereto, have given and granted, and by these presents do give and grant, unto the said Archibald C. Peachy and William H. Aspinwall, and to their heirs, the tract of land embraced and described in the foregoing survey; but with the stipulation that in virtue of the 15th section of the said act, the confirmation of this said claim and this patent "shall not affect the interests of third persons."

To have and to hold the said tract, with the appurtenances, unto the said Archibald C. Peachy and William H. Aspinwall, and to their heirs and assigns forever, with the stipulation aforesaid.

In testimony whereof, I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington this eleventh day of June, in the year of our Lord one thousand eight hundred and

sixty-nine and of the Independence of the United States the ninety-third.

By the President,

U. S. GRANT,
By I. N. BURRITT, *Secretary.*

[UNITED STATES GENERAL LAND OFFICE SEAL.]

MARTIN BUELL,
Acting Recorder of the General Land Office ad interim.

Recorded vol. 7, pages 246 to 249, inclusive.

57 Received for record July 6th, A. D. 1869, at one o'clock and 30 min. p. m., and recorded July 26th, 1869, at 3 hr. p. m. at the request of E. W. Morse.

G. A. PENDLETON,
County Recorder,
By ED. HEUCK, *Deputy.*

(Endorsed:) No. E-34-Eq. U. S. A. *vs.* Coronado Beach Co. U. S. Exhibit No. 8. Filed 2nd Dec. 1919. Chas. N. Williams, clerk, by Ernest I. Morgan, deputy clerk. Blue-print map, filed under same date and number, is a part of this exhibit.

58 Mr. CLARK. Will you stipulate with us, Colonel Denis, that the United States in cause No. 257 took an appeal to the Supreme Court of the United States, and that that appeal was, on motion of the Attorney General of the United States, dismissed?

Mr. DENIS. Yes.

Mr. CLARK. And a mandate sent down by the Supreme Court of the United States to the District Court of the United States for the Southern District of California, and under that mandate the decision or decree in cause No. 257 was directed to be proceeded upon as a final decree.

Mr. DENIS. I do, because it is included in an offer I have already made—in two of the offers—one the decree of confirmation and the other the patent.

Mr. DUNNE. Did you offer the petition of the claimants in the District Court?

Mr. DENIS. Yes; that is, before the Land Commission.

Mr. DUNNE. And did you offer the answer of the Government in the United States District Court?

Mr. DENIS. No; but I have no objection to its going in.

Mr. DUNNE. And the petition on appeal?

The petition of claimants on appeal, and the answer of the United States thereto, were thereupon, at the suggestion of counsel for defendant, admitted and filed in evidence as Plaintiff's Exhibits 13 and 12, respectively, and the same are in the words and figures following, to-wit:

59 *Petition for review.*

No. 257.

In the District Court of the United States for the Southern District of California.

FREDERICK BILLINGS ET AL., ASSIGNEES OF Bezar Simmons,
vs.
THE UNITED STATES.
} Appeal by Claimants.

To the honorable the judge of the United States District Court for the Southern District of California:

The petition of Frederick Billings, James R. Bolton, and Henry W. Halleck, assignees of Bezar Simmons, and of Orin Simmons, Henry Simmons, Nathan P. Simmons, Benjamin F. Simmons, Priscilla Simmons, Ann S. Ryder, and Augusta S. Bartholomew, heirs at law of Bezar Simmons, deceased, respectfully represent that under the provisions of the act of Congress of 3d of March, 1851, a petition was presented to the commissioners appointed under said act to examine claims to land in California, praying for the confirmation of the claim of petitioners to the tract of land known as the island or peninsula of the port of San Diego; that said petition was accompanied by evidence of the title of said Bezar Simmons, and the other petitioners, to which for more particular information petitioners beg leave to refer; that the said claim was designated as No. 188, on the docket of said commissioners, and was rejected by them on the 31st day of October, 1854; that the said land is situated in the Southern Judicial District of California; that a transcript of the proceedings and decision of the commissioners was filed in the office of the clerk of the court for that district on the 2nd day of July, 1855; and that a notice of appeal on behalf
60 of the claimants was filed with said clerk on the said 2nd day of July, 1855.

Your petitioners pray for a rehearing of the case upon this appeal; that the said decision of the commissioners may be reversed and annulled and that the court will make such decree and order, as may be necessary and proper to confirm said claim to the premises mentioned and referred to in their said petition and evidences of claim.

And your petitioners will ever pray, &c., &c.

HALLECK, PEACHY & BILLINGS,
and STANLEY & KING,
Attys. for Petitioners.

LOS ANGELES, *Sept. 22nd, 1885.*

(Endorsed:) Filed Sept. 22nd, 1855. C. E. Carr, clerk, by John W. Ross, dep.

61 *Answer of U. S. Atty.*

In the District Court of the United States for the Southern District of California.

*N*on. Isaac S. K. Ogier, judge.

FREDERICK BILLINGS ET AL., ASSIGNEES OF BEZAR Simmons, appellants, *vs.* THE UNITED STATES, APPELLEE.	No. 257. Transcript No. 188.

The answer of Pacificus Ord, attorney of the United States for the Southern District of California, for and in behalf of the United States, to the petition of Frederick Billings, James R. Bolton, and Henry W. Halleck, assignees of Bezar Simmons and of Orrin Simmons, Henry Simmons, Nathan R. Simmons, Benjamin F. Simmons, Priscilla Simmons, Ann S. Ryder, and Augusta S. Bartholomew, heirs at law of Bezar Simmons, deceased, for a rehearing of this case, and that the decision of the commissioners appointed under the act of Congress of 3d March, 1851, to examine claims to land in California, be reversed and annulled, and their claim to the island or peninsula of the port of San Diego be confirmed, says: That he denies all and singular each and every allegation in said petition contained. And further this respondent denies generally the validity of the alleged title of the claimants to the said land claimed by them. And further this respondent denies that the said Billings, Bolton & Halleck are the assignees of said alleged heirs at law of said Simmons, deceased.

And the said respondent prays that this honorable court will affirm the decision of the said commissioners in said case, and decree the said alleged title for said land to be invalid, and for general relief.

P. ORD,
Attorney of the United States
for the Southern District of California.

(Endorsed:) Filed Jan'y 14th, 1856. C. E. Carr, clk.

62 Mr. CLARK. Will you stipulate with us, Colonel Denis, that the United States in cause No. 257 took an appeal to the Supreme Court of the United States, and that that appeal was, on motion of the Attorney General of the United States, dismissed, and a mandate sent down by the Supreme Court to the District Court of the United States for the Southern District of California, and under that mandate the decision or decree in cause No. 257 was directed to be proceeded upon as a final decree?

Mr. DENIS. I do, because it is included in an offer I have already made—in two of the offers—one the decree of confirmation and the other the patent.

The said mandate from the Supreme Court of the United States was thereupon, at the suggestion of counsel for defendant, admitted and filed in evidence as Plaintiff's Exhibit 14, and the same is in the words and figures following, to wit:

Mandate from the Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the honorable the judge of the District Court of the United States for the Southern District of California, greeting:

[SEAL.]

Whereas lately in the District Court of the United States for the Southern District of California before you in a cause between Frederick Billings, James R. Bolton, & Henry W. Halleck, assignees of Bezar Simmons et al., appellants, and the United States, appellees (No. 257, for "The island or peninsula of San Diego"), wherein the decree was rendered in favor of the said appellants, as by the inspection of the transcript of the record of the said District Court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in
63 such case made and provided, fully and at large appears; and whereas in the present term of December, in the year of our Lord one thousand eight hundred and sixty-three, the said cause came on to be heard before said Supreme Court on the said transcript of the record, and on the motion of Mr. Attorney General Bates, of counsel for the appellants, it is now here ordered, adjudged, and decreed by this court that this cause be, and the same is hereby, dismissed, 12 Feb. You, therefore, are hereby commanded that such further proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the honorable Roger B. Taney, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-three.

Cost of ———.

Clerk, $———.

Attorney, $———.

Taxed by D. W. Middleton, clerk of the Supreme Court of the United States.

(Endorsed:) Filed May 7, 1867, Geo. C. Gorham, clerk, by John O. Wheeler, deputy.

64 It is stipulated that the foregoing be approved by the court under equity rule 75.

A. MITCHELL PALMER,
Attorney General of the United States,
GEO. J. DENIS,
Special Assistant to the Attorney General,
J. ROBERT O'CONNOR,
United States Attorney, Southern District of California,
Solicitors for Plaintiff.

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Solicitors for Defendant.

Approved, July 19, 1920.
OSCAR A. TRIPPET,
Judge.

(Endorsed:) E-34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, *vs.* Coronado Beach Company, a corporation, defendant. Statement of evidence to be included in transcript on appeal. Lodged Jul. 8, 1920. Chas. N. Williams, clerk. Settled statement of evidence filed July 19, 1920. Chas. N. Williams, clerk, by R. S. Zimmerman, deputy clerk.

65 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* THE CORONADO BEACH COMPANY, A CORPORATION, claimant and defendant.	No. E-34. Equity.

Notice of lodgment of statement of evidence on appeal.

To the Coronado Beach Company, a corporation, defendant above named, and to Messrs. Morrison, Dunne & Brobeck, Peter F. Dunne, Esq., Herbert W. Clark, Esq., R. G. Dilworth, Esq., and James E. Wadham, Esq., solicitors for said defendant:

Please take notice that on the 8th day of July, 1920, the plaintiff lodged with the clerk of the above entitled court its statement of evidence to be included in transcript on appeal; and that on the 19th day of July, 1920, said plaintiff and appellant will ask the court or judge to approve said statement of evidence.

Dated July 8th, 1920.

A. MITCHELL PALMER,
Attorney General of the United States,
GEO. J. DENIS,
Special Assistant to the Attorney General,
J. ROBERT O'CONNOR,
United States Attorney, Southern District of California,
Solicitors for Plaintiff and Appellant.

66 Equity. No. E-34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, *vs.* The Coronado Beach Company, defendant. Notice of Lodgment of statement of evidence on appeal. Filed Jul. 19, 1920. Chas. N. Williams, clerk, by R. S. Zimmerman, deputy clerk.

Received a copy of the within notice this 14th day of July, 1920.

MORRISON, DUNNE & BROBECK,
PETER F. DUNNE,
HERBERT W. CLARK,
R. G. DILLWORTH,
JAS. E. WADHAM,
Solicitors for the defendant, Coronado Beach Co.

67 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* THE CORONADO BEACH COMPANY, A CORPORATION, claimant and defendant.	No. E-34. Equity.

PETITION FOR APPEAL.

To the honorable court above entitled:

The United States of America, plaintiff in the above entitled action, considering itself aggrieved by the decree made and entered in the above entitled cause on the 15th day of March, 1920, and by the order of said court made and entered herein on the 1st day of June, 1920, denying plaintiff's motion to rescind, vacate, and set aside said decree; by which said decree the title of claimant and defendant was quieted and established in and to the land in said decree described, against any and all claims and demands whatsoever of plaintiff, the United States of America; said decree being, and being held by said court to be, a final determination of the rights of claimant and defendant in and to the said land, over and beyond any rights thereto in the United States, hereby appeals from said decree and said order to the Supreme Court of the United States, for the reasons specified in its assignment of errors filed herewith, and prays that its appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which such decree was made and entered, as aforesaid, duly authenticated, may be sent to the Supreme Court of the United States.

68

A. MITCHELL PALMER,
Attorney General of the United States.
GEO. J. DENIS,
Special Assistant to the Attorney General.
J. ROBERT O'CONNOR,
United States Attorney, Southern District of California,
Solicitors for Plaintiff and Appellant.

69 Equity. No. E-34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, vs. The Coronado Beach Company, defendant. Petition for appeal. Filed Jul. 8, 1920, Chas. N. Williams, Clerk.

70 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF, vs. THE CORONADO BEACH COMPANY, A CORPORATION, claimant and defendant.	No. E-34. Equity.

Assignment of errors.

The United States of America, the plaintiff and appellant herein, having appealed, or being about to appeal, from that certain decree made in the District Court of the United States for the Southern District of California, Southern Division, on the 15th day of March, 1920, in an action pending in said court, in which the United States of America was plaintiff, and The Coronado Beach Company, a corporation, was claimant and defendant, and from the order of said court made and entered herein on the 1st day of June, 1920, denying plaintiff's motion to rescind, vacate, and set aside said decree; by which said decree the title of claimant and defendant, The Coronado Beach Company, in and to the land described in said decree, was quieted and established against any and all claims and demands whatsoever of plaintiff, the United States of America, the plaintiff says that in the records and proceedings in the said court in said action there are manifest errors, and presents the following as its assignment of errors upon the said appeal:

I.

The District Court of the United States for the Southern District of California erred in decreeing that the defendant, The Coronado Beach Company, is the exclusive owner in fee simple absolute, of the land described in said decree, and in quieting and establish-

71 lishing defendant's title thereto as against plaintiff, for the reason that the evidence before the court shows that plaintiff, the United States of America, is and was at all the times in said decree mentioned the owner of an easement and right to use said land for the defense or security of the Nation, and in connection therewith as permanent aviation stations for the Army and Navy and for aviation school purposes, which said easement, right, title, interest, and estate of plaintiff in and to said land is paramount to, and over and beyond, any right, title, interest, claim, or demand of said defendant therein or thereto.

II.

The said court erred in denying plaintiff's motion to rescind, vacate, and set aside said decree.

Wherefore the plaintiff prays that the said decree of this court made and entered on March 15th, 1920, be reversed, and the said court be directed to enter a decree ordering and adjudging that the plaintiff, the United States of America, is the owner of an easement and interest in and to the said land described in said decree, for use for the defense or security of the Nation, and in connection therewith, as sites for permanent aviation stations for the Army and Navy, and for aviation school purposes, and over and beyond any right, title, interest, claim, or demand of said defendant therein or thereto.

All of which is respectfully submitted.

A. MITCHELL PALMER,
Attorney General of the United States.
GEO. J. DENIS,
Special Assistant to the Attorney General.
J. ROBERT O'CONNOR,
United States Attorney,
Southern District of California,
Solicitors for Plaintiff and Appellant.

72 Equity. No. E–34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, vs. The Coronado Beach Company, defendant. Assignment of errors. Filed Jul. 8, 1920. Chas. N. Williams, clerk.

73 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE CORONADO BEACH COMPANY, A CORPORATION, CLAIMANT AND DEFENDANT.
} No. E–34. Equity.

Order allowing appeal.

In the above entitled suit, the plaintiff having filed its petition for an order allowing an appeal from the decree of this court made and entered in this suit on the 15th day of March, 1920, quieting and establishing the title of defendant in and to the land described in said decree against any and all claims and demands whatsoever of plaintiff, the United States of America, together with assignment of errors;

Now, on motion of Geo. J. Denis, Esq., solicitor for plaintiff, it is ordered that said appeal be, and hereby is, allowed to plaintiff to the Supreme Court of the United States from said decree.

It is further ordered that a certified transcript of the records and proceedings herein, in accordance with the statutes and the Equity Rules, be forthwith transmitted to said Supreme Court of the United States.

Dated July 8th, 1920.

OSCAR A. TRIPPET,
District Judge.

74 Equity No. E-34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, *vs.* The Coronado Beach Company, defendant. Order allowing appeal. Filed Jul. 8, 1920. Chas. N. Williams, clerk.

75 United States of America, District Court of the United States, Southern District of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE CORONADO BEACH COMPANY, A CORPORATION, CLAIMANT AND DEFENDANT.

Clerk's office. No. E-34. Equity. Praecipe.

To the clerk of said court:

SIR: Please issue in the above-entitled cause a certified transcript of the record, upon an appeal allowed in this cause, to the Supreme Court of the United States, the said transcript to include the following:

Bill of complaint.
Answer.
Reply to answer.
Decree.
Opinion of the court.
Motion to rescind, vacate, and set aside said decree.
Opinion or order denying motion to rescind, vacate, and set aside decree.
Statement of evidence to be included in transcript on appeal.
Praecipe for transcript on appeal.
Notice of lodgment of statement of evidence to be included in transcript on appeal.
Petition for appeal.
Assignment of errors.
Order allowing appeal.

A. MITCHELL PALMER,
Attorney General of the United States,
GEO. J. DENIS,
Special Assistant to the Attorney General,
J. ROBERT O'CONNOR,
United States Attorney, Southern District of California,
Solicitors for Plaintiff and Appellant.

(Endorsed:) Received a copy of the within praecipe this 14th day of July, 1920. Morrison, Dunne & Brobeck, Peter F. Dunne, Herbert W. Clark, R. G. Dilworth, Jas. E. Wadham, solicitors for the defendant Coronado Beach Company.

E-34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, *vs. The* Coronado Beach Company, defendant. Praecipe for transcript. Filed Jul. 19, 1920. Chas. N. Williams, clerk, by R. S. Zimmerman, deputy clerk.

In the District Court of the United States of America in and for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF, vs. THE CORONADO BEACH COMPANY, A CORPORATION, defendant.	E-34. Equity.

Certificate of clerk of the United States District Court to transcript of record on appeal.

I, Chas. N. Williams, clerk of the District Court of the United States of America in and for the Southern District of California, do hereby certify the foregoing 76 typewritten pages, numbered from 1 to 76, inclusive, and comprised in one volume, to be a full, true, and correct copy of the bill of complaint; answer; reply to answer; decree; opinion of the court; motion to rescind, vacate, and set aside decree; order denying motion to rescind, vacate, and set aside decree; statement of evidence; notice of lodgment of statement of evidence; petition for appeal; assignment of errors; order allowing appeal; and praecipe for transcript on appeal; also the original citation on appeal, and the same together constitute the record in said cause as specified in the said praecipe filed in my office on behalf of the appellant by his attorneys of record.

In testimony whereof I have hereunto set my hand and affixed the seal of the District Court of the United States of America in and for the Southern District of California, Southern Division, on this 14th day of August, in the year of our Lord one thousand nine hundred and twenty, and of our independence the one hundred and forty-fifth.

[SEAL.] CHAS. N. WILLIAMS,
Clerk of the District Court of the United States of America in and for the Southern District of California.
By R. S. ZIMMERMAN,
Deputy Clerk.

79 In the Supreme Court of the United States.

UNITED STATES OF AMERICA, plaintiff, *vs.* THE CORONADO BEACH COMPANY, a corporation, claimant and defendant.	No. E–34. Equity. Stipulation.

It is herewith stipulated that a photographic copy of plat of the island or peninsula of San Diego, as surveyed under instructions from the U. S. Surveyor General by Henry Hancock, deputy surveyor, in June and July, 1867, and approved June 11th, 1869, by Jos. S. Wilson, Commissioner of the General Land Office, a photographic copy of which said plat is hereto attached and made a part of this stipulation, may be made a part of the record on appeal herein.

Dated September 21st, 1920.

A. MITCHELL PALMER,
Attorney General of the United States.
GEO. J. DENIS,
Special Assistant to the Attorney General.
J. ROBERT O'CONNOR,
United States Attorney,
Southern District of California,
Attorneys for Plaintiff.
MORRISON, DUNNE & BROBECK,
PETER F. DUNNE,
HERBERT W. CLARK,
READ G. DILWORTH,
JOS. S. WADHAM,
Attorneys for Defendant.

(For map above referred to see side page 198 of record on writ of error.)

80 Equity No. E–34. In the Supreme Court of the United States. United States of America, plaintiff, *vs.* The Coronado Beach Company, defendant. Stipulation. Office of the clerk, Supreme Court U. S. Received Sep. 29, 1920.

81 File No. 27882. Supreme Court U. S. October term, 1920. Term No. 525. The United States, pl'ff in error, *vs.* The Coronado Beach Company. Stipulation for addition to record. Filed Sept. 29, 1920.

(Indorsement on cover:) File No. 27882. S. California, D. C. U. S. Term No. 525. The United States of America, appellant, *vs.* Coronado Beach Company. Filed September 2d, 1920. File No. 27882.

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